IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1895 of 2004

CHAMPA DEVI & ANR.
V/S
VIKRAM SINGH & ANR.

Mr. GR GOYAL, for the appellant / petitioner

Date of Order : 3.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It is contended by learned counsel that the Tribunal has erred in holding the contributory negligence of the deceased to the extent of 30%.

I have considered the submissions, and have perused the record.

A look at the statements of P.W.1 and 2 does show that they do not through any light whatever on the question of negligence/extent of negligence of the motorcyclist in causing the accident, inasmuch as, P.W.2 has claimed to be the eye-witness, and has only deposed that near Khatarnak Pulia No.1, a bullet motorcyclist hit a pedestrian, and the pedestrian fell down. He is a witness to the site plan, Ex.P/7. In these circumstances, the matter is required to be considered only from the circumstances, appearing in Ex.P/7, the site plan.

A look at Ex.P/7 read with P/8 shows that the motorcyclist was said to be going from North to South. The plan shows that in the East, there is a boundaried railway track, while in the West, prior to the place of accident, there is a Bungalow, which is the Guest House of the High Court. Then there is a road, leading to the telegraph office, and then, there is a Bungalow of Hon'ble Justice Mr.Sunil Kumar Garg. The place of accident is said to be in front of the Bungalow of Hon'ble Justice Mr.Sunil Kumar Garg. At this place, the accident is said to have occurred on a distance of 8 ft. from East towards West on the main road, which is 30 ft. wide i.e. it is 7 ft. towards East from the dividing line of the road, which is said to be marked with yellow colour. This does show that in the portion of the road, intended for passage of the traffic going from North to South, the deceased was occupying a space beyond 50% from towards its correct side. Though in the First Information Report, it is mentioned that the deceased was crossing the road, but then looking to the things appearing in the site plan, Ex.P/7, being in the East, there is a railway line, while in the

West, there is a Bungalow of Hon'ble Justice Mr.Sunil Kumar Garg, it cannot be said that there was anything for the deceased to cross the road. Thus, it shows that the deceased was moving amidst the road, and as such, when the Tribunal has assessed his part of the contribution in accident to the extent of 30%, it cannot be said to be wrong.

The other contention raised is about the selection of appropriate multiplier. The deceased is claimed to be of 50 years, while the Tribunal has found him to be 55 years. The learned Tribunal has employed a multiplier of 11. According to the Schedule appended to the Motor Vehicles Act, for the persons of the age 50 to 55, the multiplier is 11 only, and as such, I do not find any ground to interfere in that as well.

The appeal thus, has no force, and is dismissed summarily.

(N P GUPTA),J.

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